Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O.No. 171 of 2002

The New India Assurance Company Ltd.,
Divisional Office, opposite Judges Court
Nainital Road, Haldwani (Nainital)
Through its Divisional Manager.
.....Appellant.

Versus

1. Anis Ahmad S/o Sri Raish Ahmad,
R/o Jawahar Nagar, Haldwani (Nainital)
..... Respondent/Claimant.

2.Sabir Hussain S/o late Sri Anwar Hussain,
R/o Tata Murasari, Bhotia Paroa, Haldwani,
(Nainital).
Owner of Motor Cycle No. UP02 D-3020
..... Opp.party/Respondent.

.....

Sri R.B.Agarwal, learned counsel for the appellant.
Sri Z.U.Siddiqui & Dinesh Chauhan, learned counsel for the respondent No.1.

Date: 13th September, 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This is an appeal preferred by the opposite party-New India Assurance Company under Section 173 of the Motor Vehicles Act against the judgment and award dated 25.06.2002 passed by the Motor Accident Claims Tribunal/II Fast Track Court, Nainital in Motor Accident Claim Case No. 176 of 1999, whereby the claim petition has been decreed for a compensation of Rs. 2,10,000.00 against the opposite party No.2 – appellant / Insurance Company alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment.

2- Brief facts giving rise to the present appeal are that on 29.8.1999 at 11.30 a.m. when the petitioner was coming out from his store which is situate at Hydel Gate, Haldwani where his scooter was also parked at the same time, Motor Cycle No. UP 02 D-3020 which was being driven rashly and negligently came from the side of Kathgodam dashed against the petitioner. The petitioner fell down causing fracture on his left leg. He was taken to Krishna Nursing Home, Haldwani by the persons standing nearly the place of accident. Thereafter he was taken to Deepak Memorial Hospital, Delhi for better treatment. The left leg of the petitioner has been operated several times at Delhi in which he has spent about Rupees one and half lac. The doctor advised him to take complete rest for one year. The petitioner was 45 years old at the time of accident. He was employed as Junior Engineer in Uttar Pradesh State Electricity Board and he was earning Rs. 11,000/- per month. The petitioner filed the claim petition for compensation of the amount of Rs.10 lac before the Tribunal against the opposite parties.

3- The opposite parties contested the case before the Tribunal. The Opp.party No.1-Sabir Hussain field the written statement admitting the ownership of the Motor Cycle No. UP 02-D-3020. He alleged that the said Motor cycle was insured with the New India Insurance Company. The Opp.party No.2-New India Insurance Company also filed its written statement denying the allegations of the claim petition and alleged that the petitioner is bound to prove his assertions. The amount of compensation is also excessive. The Tribunal, on the pleadings of the parties, framed necessary issues and on the basis of the evidence decreed the claim petition accordingly. Feeling aggrieved,

the New India Assurance Company has come up in this appeal.

4- The learned counsel for the appellant only challenged that appeal on the ground that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation but he could not indicate that application under Sec. 170 of the Motor Vehicles Act was moved for permission before the Tribunal to contest the case on all the grounds. We have gone through the record of the case and find that there is neither permission of the Tribunal under Section 170 of the Motor Vehicles Act, nor there is any finding that there has been collusion between the owner and the claimants. In this case the owner of the offending Motor cycle has contested the case before the Tribunal and has also filed documentary evidence. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."***

Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussion, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.

(B .S.Verma, J.) **(P.C. Verma, J.)**

13.09.2004
P.Singh